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D.N., Appellant)	
)	
and)	Docket No. 16-0627
)	Issued: May 11, 2016
U.S. POSTAL SERVICE, POST OFFICE,)	
Bronx, NY, Employer)	
)	

Case Submitted on the Record

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On February 7, 2016 appellant, through his representative, filed a timely appeal from a November 30, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant has established an injury on December 2, 2014 causally related to an accepted employment incident.

On December 10, 2014 appellant, then a 27-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 2, 2014 he was injured when he was pulling out

¹ 5 U.S.C. § 8101 *et seq.*

of a parking space when his vehicle caught the bumper of another vehicle, and to prevent further damage he abruptly stopped and his body jerked.

With respect to medical evidence, the record includes a September 30, 2013 report from Dr. Nadya Swedan, a Board-certified physiatrist, who diagnosed right herniated nucleus pulposus (HNP) L3-4 with radiculopathy, L4-S1 HNP, status post lumbar laminectomy, and “new dis[c] herniation.” She indicated that appellant should be off work through October 31, 2013. By report dated March 31, 2014, Dr. Swedan reported that appellant was unable to work due to postsurgery, flare-ups, and possible future surgery. She diagnosed multiple level disc herniations.

In a brief form report dated December 3, 2014, Dr. Annie Collier, an emergency medicine specialist, indicated that appellant was treated at the emergency room and could return to work in one or two days. Dr. Swedan provided a brief December 4, 2014 note that appellant was unable to work due to multiple level disc herniations.

By letter dated December 16, 2014, OWCP requested that appellant submit additional evidence to support his claim for compensation. It indicated that the factual portion of the claim had not been established as the circumstances surrounding the December 2, 2014 incident were unclear. OWCP also advised appellant that the medical evidence must include an opinion with supporting explanation as to how the incident caused or aggravated a diagnosed condition. It allotted him 30 days to submit the requested evidence, but he did not respond within the allotted time.

In a decision dated January 22, 2015, OWCP denied appellant’s claim for compensation. It found he had not established the factual or medical components of fact of injury.

Appellant requested a hearing before an OWCP hearing representative. With it he submitted a January 20, 2015 report, Dr. John Mitamura, a Board-certified orthopedic surgeon, who provided a history of a December 2, 2014 incident where appellant’s vehicle engaged with the bumper of another vehicle and appellant lurched. He indicated that appellant previously had back surgery in 2008. Dr. Mitamura provided results on examination and reported that lumbar spine images showed significant foraminal stenosis at L4-5 and L5-S1, with significant retrolisthesis at L4-5 consistent with lumbar spine instability. He recommended magnetic resonance imaging (MRI) scan studies.

On September 16, 2015 appellant submitted a statement describing the December 2, 2014 incident. He indicated that the lighting was poor and it was raining at the time of the incident, and the rear bumper of his vehicle locked with the front bumper of another employing establishment vehicle. According to appellant, he stopped his vehicle and then as he tried to detach the bumpers, the other vehicle’s bumper snapped and appellant was jerked forward and then back. He indicated that he was on his regularly assigned duties in the employing establishment parking lot at the time of the incident.

Additionally, appellant submitted a January 23, 2015 MRI scan report from Dr. Stephen Greenberg, a radiologist. Dr. Greenberg described the findings as disc space narrowing at L3-4, L4-5, and L5-S1 with mild loss of signal on long pulse sequence consistent with degenerative

change. He diagnosed status post left-sided hemilaminotomy of L5 at the L5-S1 level, broad-based central and left-sided disc extrusion at this level with compression of the thecal sac and left S1 nerve root in the lateral recess, annular bulge with central disc extrusion at the L4-5 level with mild-to-moderate compression of the thecal sac, and annular bulge with central disc protrusion and right foraminal disc extrusion at the L3-4 level.

A hearing was held on September 17, 2015. On October 3, 2015 appellant submitted a September 30, 2015 report from Dr. Swedan, who indicated that appellant was treated on December 4, 2014. Dr. Swedan described the December 2, 2014 incident. She indicated that appellant had L5-S1 lumbar discectomy and hemilaminotomy surgery in 2008, but appellant was managing his postoperative back with exercise and physical therapy. Dr. Swedan reported that the January 23, 2015 MRI scan showed disc extrusions at multiple levels. She diagnosed L3-S1 disc extrusion, left SI and right L3 lumbar radiculopathy, and worsening of degenerative disease of facet joints L4-5. Dr. Swedan concluded that it was her opinion that appellant's conditions of multilevel disc extrusions at L3-4, L4-5, and L5-S1, and lumbar radiculopathy were causally related to the accident of December 2, 2014 as described. She stated, "The reason for this opinion is herniated discs occur from the type of accident described: an acceleration/deceleration injury resulting in traction injury to the spine with disc displacement."

By decision dated November 30, 2015, the hearing representative affirmed OWCP's January 22, 2015 decision as modified finding that the evidence was sufficient to establish a December 2, 2014 employment incident as alleged. However, he further found that the medical evidence was not sufficiently rationalized to establish an injury casually related to the employment incident.

LEGAL PRECEDENT

FECA provides for the payment of compensation for "the disability or death of an employee resulting from personal injury sustained while in the performance of duty."² The phrase "sustained while in the performance of duty" in FECA is regarded as the equivalent of the commonly found requisite in workers' compensation law of "arising out of and in the course of employment."³ An employee seeking benefits under FECA has the burden of proof establishing that he or she sustained an injury while in the performance of duty.⁴ In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether "fact of injury" has been established. Generally "fact of injury" consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.⁵

² 5 U.S.C. § 8102(a).

³ *Valerie C. Boward*, 50 ECAB 126 (1998).

⁴ *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

⁵ *See John J. Carlone*, 41 ECAB 354, 357 (1989).

Rationalized medical opinion evidence is medical evidence that is based on a complete factual and medical background, of reasonable medical certainty, and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁶

ANALYSIS

In the present case, appellant alleged that he sustained an injury on December 2, 2014. When his vehicle bumper became locked with another vehicle while in the performance of duty and after disengaging the bumpers he was jerked forward. OWCP has accepted that an incident occurred as alleged.

The issue is whether the medical evidence is sufficient to establish a diagnosed condition as causally related to the employment incident. Dr. Mitamura provided a history of the December 2, 2014 employment incident but did not provide an opinion on causal relationship between a diagnosed condition and the employment incident.

Dr. Swedan provided a description of the December 2, 2014 employment incident in her September 30, 2015 report. However, her report is insufficient to establish a diagnosed condition causally related to the employment incident. The Board notes that the medical history Dr. Swedan provided was incomplete. Dr. Swedan noted a 2008 back surgery, and then indicated that appellant had been managing his back condition. She did not refer to her own September 30, 2013 report, in which she opined appellant was disabled for work and diagnosed lumbar disc herniations and noted a new disc herniation, or her March 31, 2014 report that diagnosed multiple disc herniations and noted the possibility of future surgery. In addition, Dr. Swedan did not discuss her examination findings on December 4, 2014. The December 4, 2014 report of record simply diagnoses disc herniations, the same diagnoses as in the preinjury report of March 31, 2014.

An opinion of a physician must be based on a complete factual and medical background of appellant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁷ Appellant has submitted insufficient evidence in this case.

On appeal, appellant's representative argues that Dr. Swedan's September 30, 2015 report is sufficient to establish an employment-related condition. For the reasons discussed, the Board finds the medical evidence is insufficient to meet appellant's burden of proof.

⁶ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

⁷ *Jacqueline M. Nixon-Stewart*, 52 ECAB 140 (2000).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not establish an injury causally related to the accepted December 2, 2014 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 30, 2015 is affirmed.

Issued: May 11, 2016
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board